

hereto, and all documents and certificates to be delivered by the parties pursuant hereto, collectively represent the entire understanding and agreement between Buyer and Seller with respect to the subject matter hereof. All schedules attached to this Agreement shall be deemed part of this Agreement and incorporated herein, where applicable, as if fully set forth herein. This Agreement supersedes all prior negotiations between Buyer and Seller, and all letters of intent and other writings relating to such negotiations, and cannot be amended, supplemented or modified except by an agreement in writing which makes specific reference to this Agreement or an agreement delivered pursuant hereto, as the case may be, and which is signed by the party against which enforcement of any such amendment, supplement or modification is sought.

12.7 Waiver of Compliance; Consents. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, representation, warranty, covenant, agreement or condition herein may be waived by the party entitled to the benefits thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. Whenever this Agreement requires or permits consent by or on behalf of any

party hereto, such consent shall be given in writing in a manner consistent with the requirements for a waiver of compliance as set forth in this Section 12.7.

12.8 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall be invalid or unenforceable to any extent, the remainder to this Agreement and the application of such provision to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, provided that the remainder of the Agreement remains consistent with the intent of the parties.

12.9 Counterparts. This Agreement may be signed in any number of counterparts with the same effect as if the signature on each such counterpart were upon the same instrument.

IN WITNESS WHEREOF, this Agreement has been executed by Buyer and Seller as of the date first above written.

BUYER:

HEKILI BROADCASTING COMPANY

BY: Michael S. Naumu - President
Michael S. Naumu, President

SELLER:

CHESTNUT BROADCASTING, INC.

BY: _____
Christopher Devine, President

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BUYER:

HEKILI BROADCASTING COMPANY

BY: _____
Michael S. Naumu, President

SELLER:

CHESTNUT BROADCASTING, INC.

BY:  _____
Christopher Devine, President

EXHIBIT A

Indemnification Fund Agreement
(Attached)

INDEMNIFICATION FUND AGREEMENT

This INDEMNIFICATION FUND AGREEMENT dated January 14, 1994, by and among HEKILI BROADCASTING COMPANY, a Utah corporation (the "Buyer"), CHESTNUT BROADCASTING, INC., a Delaware corporation ("Seller"), and Zions First National Bank, as Escrow Agent (the "Escrow Agent").

W I T N E S S E T H:

WHEREAS, Buyer and Seller entered into an Asset Purchase Agreement on the date hereof (the "Purchase Agreement"), by which Seller agreed to sell, transfer and deliver to Buyer, and Buyer agreed to purchase and assume, substantially all of the assets of radio station KBER-FM, 101.1, Ogden, Utah (the "Station"); and

WHEREAS, pursuant to Section 11.5 of the Purchase Agreement, Buyer and Seller have agreed that Two Hundred Fifty Thousand Dollars (\$250,000.00) of the Purchase Price to be paid by Buyer to Seller shall be deposited in escrow with the Escrow Agent in order to provide a fund for the payment of any claims of Buyer giving rise to indemnification under the Purchase Agreement.

NOW, THEREFORE, in consideration of the above and of the promises contained herein, the parties, intending legally to be

bound, agree as follows:

SECTION 1

INDEMNIFICATION FUND

1.1 Delivery. Simultaneously with the execution of this Agreement, Buyer is depositing, by bank check or certified check or by other means mutually acceptable to the parties, with the Escrow Agent One Hundred Thousand Dollars (\$100,000.00) to be held by the Escrow Agent pursuant to the terms of this Agreement as an earnest money deposit. In the event the closing of the Purchase Agreement does not occur, on or before November 30, 1994, the Escrow Agent shall deliver to the Seller the One Hundred Thousand Dollars (\$100,000.00) earnest money deposit to be retained by the Seller as liquidated damages pursuant to Section 10.4 of the Purchase Agreement and provided that the failure to close is due to a default on the part of the Buyer, unless otherwise directed by the parties, in writing. This sum, and the earnings or other proceeds of investment thereof, shall be referred to collectively herein as the "Indemnification Fund." An additional \$150,000.00 shall be deposited to this Indemnification Fund at Closing of the Purchase Agreement.

1.2 Receipt. The Escrow Agent hereby acknowledges receipt of the Indemnification Fund and agrees to hold and disburse the Indemnification Fund in accordance with the terms and conditions of this Agreement and for the uses and purposes

stated herein.

1.3 Investment and Income. The Escrow Agent shall, pending the disbursement of the Indemnification Fund pursuant to this Agreement, invest the Indemnification Fund in accordance with Seller's instructions in (a) direct obligations of, or obligations fully guaranteed by, the United States of America or any agency of the United States of America, (b) certificates of deposit issued by commercial banks having a combined capital, surplus and undivided profits of not less than Twenty-Five Million Dollars (\$25,000,000.00), or (c) other investments of equal or greater security and liquidity as directed by the Seller, in writing.

SECTION 2

PROCEDURES FOR DISBURSEMENT OF INDEMNIFICATION FUND

The Escrow Agent shall dispose of or distribute the Indemnification Fund only in accordance with this Section 2.

2.1 Claims Procedure. The following procedure shall govern the application of the Indemnification Fund to satisfy any claims by Buyer which may be brought pursuant to Section 10 of the Purchase Agreement.

a. Buyer shall promptly give written notice to the Seller and the Escrow Agent of all claims that could constitute a claim against the Indemnification Fund. The written notice shall specify (i) the factual basis for such claim, (ii) the amount of the Indemnification Fund to be reserved against the

claim, and (iii) that Buyer has given a copy of such notice to Seller.

b. With respect to claims between Buyer and Seller following receipt of notice from Buyer of a claim, Seller shall have thirty (30) days to make such investigation of the claim as Seller deems necessary or desirable. For the purposes of such investigation, Buyer agrees to make available to Seller or its authorized representative(s) the information relied upon by Buyer to substantiate the claim. If Buyer and Seller agree at or prior to the expiration of said thirty (30) day period (or any mutually agreed upon extension thereof) to the validity and amount of such claim, they shall promptly give the Escrow Agent joint instructions in writing to transfer such portion of the Indemnification Fund agreed upon by Buyer and Seller as shall be necessary to reimburse Buyer for such claim. If Buyer and Seller do not agree within said period (or mutually agreed upon extension thereof), the matter shall be referred to arbitration as provided for in Paragraph 2.3 hereof, and the Escrow Agent (or the party holding the Indemnification Fund) shall take whatever action is ordered by the arbitrator.

2.2 Release of Indemnification Fund. On the 12th month after Closing Date, if no claim for indemnification is pending, the Escrow Agent shall pay to Seller, by way of certified check or bank check the amount then remaining of the Indemnification Fund. If the 12th month after Closing Date, Buyer has any

indemnification claims pending, the Escrow Agent shall retain an amount sufficient to satisfy such claims and remit the balance to Seller. Nothing contained herein shall be deemed to limit the survival period of the representations and warranties set forth in Section 11.1 of the Purchase Agreement or to restrict or limit Buyer's rights to indemnification under the Purchase Agreement, including Seller's liability for claims in excess of the Indemnification Fund as stated in Section 11.5 of the Purchase Agreement.

2.3 Dispute. In the event of any disagreement among any of the parties to this Agreement, the Escrow Agent shall not comply with any such claims or demands as long as such disagreements may continue, and in so refusing, the Escrow Agent shall make no delivery or other disposition of any property then held by it under this Agreement until its obligations have been finally determined as provided in this Section 2.3 or until it has received appropriate instructions in writing, signed by both Buyer and Seller. All disputes hereunder shall be settled by arbitration under the rules of the American Arbitration Association with Buyer and Seller each to appoint an arbitrator and the two (2) arbitrators thus appointed to select a third (3rd) arbitrator. The decision of the arbitrators shall be final and binding on all parties hereto. The

expenses of arbitration shall be borne by the losing party or in such other manner as the arbitrators may decree.

SECTION 3

ESCROW AGENT

3.1 Appointment. The Buyer and Seller hereby appoint Escrow Agent to serve hereunder and the Escrow Agent hereby accepts such appointment and agrees to perform all duties which are expressly set forth in this Agreement.

3.2 Escrow Agent Only a Depository. The Escrow Agent acts hereunder as a depository only and is not responsible or liable for the sufficiency, correctness, genuineness or validity of any instrument deposited hereunder or with respect to the form or execution of the same or the identity, authority or rights of any person executing or depositing the same.

3.3 Notice of Default. The Escrow Agent shall not be required to take or be bound by notice of any default by the undersigned or to take any action with respect to such default involving any expense or liability unless notice in writing of such default is given to an officer of the Escrow Agent by the undersigned or any of them, and unless the Escrow Agent is indemnified in a manner satisfactory to it against any such expense or liability.

3.4 Reliance Upon Documents. The Escrow Agent shall be protected in acting upon any notice, request, waiver, consent,

receipt or other paper or document received from the undersigned parties and believed by the Escrow Agent to be genuine.

3.5 Limitations of Liability. The Escrow Agent shall not be liable for any error of judgment or for any act done or step taken or omitted by it in good faith or for any mistake of fact or law or for anything which the Escrow Agent may do or refrain from doing in connection herewith, except for its own willful misconduct.

3.6 Compensation. The fees for the services of the Escrow Agent under the terms of this Agreement are set forth below. The Escrow Agent shall have a first lien on the property and papers held by it hereunder for its compensation and any costs or expense incurred.

a. In the event the fees due the Escrow Agent remain unpaid for a period of ninety (90) days, the Escrow Agent shall have the right and is hereby authorized in its sole and absolute discretion to continue the escrow, terminate all duties hereunder, close all accounting or other records, obtain payment of its compensation, costs, liability or expense and destroy all documents, records and files or retain such items in a dormant account status subject to the escheat laws of the State of Utah.

b. All fees and charges shall be paid 50% by Seller and 50% by Buyer.

c. The fees of the Escrow Agent shall be:

- (i) Minimum fee \$500.00
- (ii) Annual fee \$300.00
- (iii) Additional reasonable compensation will be charged for such other and further duties as may be required of the Escrow Agent in the performance of this Agreement.

d. In addition to the escrow fee paid or agreed upon, the parties agree to pay the Escrow Agent's costs and expenses including a reasonable attorney fee in the event of any dispute or liquidation threatened or commenced which requires the Escrow Agent to refer such matter to its attorneys.

3.7 Indemnification. Buyer and Seller hereby agrees to indemnify, keep indemnified, and save Escrow Agent harmless from and against any and all claims, demands, actions, proceedings, judgments, losses, damages, counsel fees, court costs, payments, expenses and all liabilities whatsoever, which Escrow Agent at any time shall or may sustain or incur by reason of complying with the duties of this Agreement or any requests made by Buyer or Seller.

3.8 Resignation. Escrow Agent may resign at any time upon giving the parties hereto thirty (30) days' prior written notice to that effect. In such event, the successor shall be such person, firm or corporation as shall be mutually selected by Buyer and Seller. It is understood and agreed that such resignation shall not be effective until a successor agrees to

act hereunder; provided, however, if no successor is appointed and acting hereunder within thirty (30) days after such notice is given, Escrow Agent may pay and deliver the Indemnification Fund into a court of competent jurisdiction.

SECTION 4

LIABILITIES OF ESCROW AGENT

4.1 Limitations. The Escrow Agent shall be liable only to accept, hold and deliver the Indemnification Fund in accordance with the provisions of this Agreement and amendments thereto, provided, however, that the Escrow Agent shall not incur any liability with respect to (a) any action taken or omitted in good faith upon the advice of its counsel given with respect to any questions relating to the duties and responsibilities of the Escrow Agent under this Agreement, or (b) any action taken or omitted in reliance upon any instrument which the Escrow Agent shall in good faith believe to be genuine (including the execution, the identity or authority of any person executing such instrument, its validity and effectiveness, and the truth and accuracy of any information contained therein), to have been signed by a proper person or persons and to conform to the provisions of this Agreement.

4.2 Collateral Agreements. The Escrow Agent shall not be bound in any way by any contract or agreement between other parties hereto, whether or not it has knowledge of any such

contract or agreement or of its terms or conditions.

SECTION 5

TERMINATION

This Agreement shall be terminated (a) upon disbursement or release of the Indemnification Fund by the Escrow Agent, (b) by written mutual consent signed by all parties, or (c) by payment of the Indemnification Fund into a court of competent jurisdiction in accordance with Section 3.8 hereof. This Agreement shall not be otherwise terminated.

SECTION 6

OTHER PROVISIONS

6.1 Notices. Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly delivered on the date of personal delivery or on the date of receipt if mailed by registered or certified mail, postage prepaid and return receipt requested, and shall be deemed to have been received on the date of personal delivery or on the date set forth on the return receipt, to the following addresses, or to such other address as any party may request in a notice delivered in accordance with this Section 6.1 to the other parties hereto:

To Seller:

Chestnut Broadcasting, Inc.
101 W. Grand
Chicago, Illinois 60610

With a copy
(which shall not
constitute notice)
to:

Meredith S. Senter, Jr.
Leventhal, Senter & Lerman
Suite 600
2000 K Street N. W.
Washington, D. C. 2006-1809

To Buyer:

Hekili Broadcasting Company
c/o Michael S. Naumu
1085 East 900 South
Salt Lake City, Utah 84105

With a copy
(which shall not
constitute notice)
to:

Dennis V. Haslam
Winder & Haslam, P.C.
175 West 200 South, Suite 4000
Salt Lake City, Utah 84101

To Escrow Agent:

Zions First National Bank
P. O. Box 30880
Salt Lake City, Utah 84130

6.2 Authority for Agreement. Each corporate party represents and warrants that it has full corporate power and authority to enter into this Agreement and has taken all corporate action necessary to carry out the transaction contemplated hereby so that when executed this Agreement constitutes a valid and binding obligation enforceable in accordance with its terms. Escrow Agent may rely upon any representation of corporate power and authority made by any corporate party and shall not be required to inquire further as to corporate power and authority.

6.3 Definitions. Capitalized terms not otherwise defined in this Agreement shall have the respective meanings given them

in the Purchase Agreement.

6.4 Benefit and Assignment. The rights and obligations of each party under this Agreement may not be assigned without the prior written consent of all other parties. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6.5 Entire Agreement; Amendment. This Agreement contains all the terms agreed upon by the parties with respect to the subject matter hereof. This Agreement may be amended only by a written instrument signed by both parties.

6.6 Headings. The headings of the sections and subsections of this Agreement are for ease of reference only and do not evidence the intentions of the parties.

6.7 Governing Law. This Agreement shall be governed by, and construed according to, the laws of the State of Utah.


6.8 Counterparts. This Agreement may be signed upon any number of counterparts with the same effect as if the signatures on all counterparts are upon the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first above written.

BUYER:

HEKILI BROADCASTING COMPANY

By


Michael S. Naumu, President

SELLER:

Chestnut Broadcasting, Inc.

By 
Christopher Devine, President

ESCROW AGENT:

Zions First National Bank

By _____
Its _____

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SELLER:

Chestnut Broadcasting, Inc.

By Christopher Devine, President**ESCROW AGENT:**

Zions First National Bank

By *Mark R. Smith*
Its 2ND V.P. & TRUST OFFICER

2627\002\indcm.eg:

EXHIBIT "B"

Form of Consulting Agreement

CONSULTING AGREEMENT

This AGREEMENT for consulting services ("Agreement") is made and entered into as of _____, 1994, by and between HEKILI BROADCASTING COMPANY, a Utah corporation ("Hekili"), and MAJOR NETWORK INCORPORATED, a Delaware corporation ("Consultant").

WHEREAS, simultaneous with the execution of this Agreement, Hekili is acquiring radio station KBER, Ogden, Utah (the "Station").

WHEREAS, Hekili is desirous of engaging Consultant, and Consultant is willing to accept such engagement, to provide consulting and other services to Hekili in conjunction with Hekili's operation of the Station;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, Hekili and Consultant hereby agree as follows:

1. Service, Scope and Quality of Work

Consultant agrees to provide the following services for the Station (the "Services"): provision of advice and assistance regarding program format, airplay, rotation and music selection; training and guidance of on-air personnel; promotion and marketing of the Station, its format and its appeal to demographically targeted audience segments; and such other similar and/or related functions as Hekili may reasonably require. Consultant agrees to provide the Services in a manner that meets all reasonable programming needs of Hekili for the Station. Consultant agrees that it will devote such time, attention and resources as may be necessary to fulfill the Services.

2. Independent Contractor

Consultant is an independent contractor. Neither Consultant nor Consultant's employees are, or shall be deemed for any purpose to be, employees of Hekili. Hekili shall not be responsible to Consultant, Consultant's employees or any governing body for any payroll taxes or employee benefits related to the performance of the Services by Consultant's employees.

3. Fees

In consideration for Consultant's providing the Services hereunder, Hekili agrees to provide Consultant with two (2) minutes of commercial time per hour, 24 hours per day, to be scheduled in thirty (30) second or sixty (60) second units as Consultant may request. Consultant shall have the full authority to sell such commercial time for its own account and to retain all revenues from the sale of such advertising.

All program and commercial material furnished by consultant shall be subject to review, approval and discretion of Hekili. Material will be reviewed by Hekili prior to broadcast and if found by Hekili to be unacceptable for any reason, Hekili, in its sole discretion may refuse to broadcast such material. No program or commercial shall be broadcast which is not subject to the prior review and approval of Hekili.

4. Term

This Agreement shall become effective on the date hereof and shall continue indefinitely until terminated by either party by at least sixty (60) days' prior notice to the other.

5. Assignment

This Agreement shall be binding upon the parties' respective successors and permitted assigns. Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party.

6. Relationship of Parties

Nothing in this Agreement shall be construed to create a relationship between the parties of agency, partnership or joint venture.

IN WITNESS WHEREOF, the parties hereto, each acting under due and proper authority, have executed this Agreement, under seal, as of the date first written above.

HEKILI

Hekili Broadcasting Company

By: _____

Name: _____

Title: _____

CONSULTANT

Major Network Incorporated

By: _____

Name: _____

Title: _____

: